

**REMARKS/ARGUMENTS**

Claims 1-22 are pending and are rejected. Claims 3-7 and 10-14 are withdrawn from consideration. Claims 1, 2, 8, 9, 15-17, 20, and 21 are rejected. Claims 18, 19, and 22 are objected to.

Applicants have amended claims 1, 2, 8 and 9 to recite the election of Group I, claims 1-22, drawn to compounds, compositions, and methods thereof having Formula 1 wherein  $W_1$  and  $W_2$  are  $-CR^{10}R^{11}$ . If applicants have misunderstood the Examiner's scope of search, they respectfully request the Examiner's notification. Applicants also will call the Examiner on October 1 to schedule an interview regarding the Office Action.

Applicants note that  $Y_2$  of formula 1, a typographical error in the specification and claims, was corrected to read  $Y_1$  in the Election and Preliminary Amendment filed February 28, 2003. Applicants respectfully request that the Preliminary Amendment be entered.

The Examiner has acknowledged applicants' election of Group I (claims 1-22) directed to formula 1 wherein both  $W_1$  and  $W_2$  are  $CR^{10}R^{11}$ ;  $Y_1$ ,  $Y_2$ ,  $Z_1$ , and  $Z_2$  are  $-(CH_2)_a-CONH-Bm$ ;  $X_1$  and  $X_2$  are nitrogen;  $Q$  is oxygen;  $K_1$  and  $K_2$  are  $-CH_2$ ;  $R^1-R^9$  are hydrogen; and  $R^{10}$  and  $R^{11}$  are  $-CH_3$ . Because no prior art was found, Examiner expanded the search to the species wherein  $W_1$  and  $W_2$  are  $CR^{10}R^{11}$ ;  $Y_1$ ,  $Y_2$ ,  $Z_1$ , and  $Z_2$  are hydrogen;  $K_1$  and  $K_2$  are  $-(CH_2)_3$ ;  $a_1 = 3$ ;  $b_1 = 0$ ; and  $Q$  is a single bond (EXP #1).

In response to Examiner's request for serial numbers of co-pending applications, applicants believe the following applications comply with the Examiner's request: U.S. Serial No. 09/864,011, filed May 23, 2001; U.S. Serial No. 09/863,971,

filed May 23, 2001; U.S. Serial No. 09/757332, filed January 9, 2001; U.S. Serial No. 09/757,333, filed January 9, 2001; U.S. Serial No. 09/978,725, filed October 17, 2001; U.S. Serial No. 09/981,206, filed October 17, 2001; U.S. Serial No. 10/071,779, filed February 7, 2002; U.S. Serial No. 09/688,949, filed October 16, 2000; U.S. Serial No. 09/688,943, filed October 16, 2000; U.S. Serial No. 10/436,759, filed May 13, 2003; U.S. Serial No. 09/688,942, filed October 16, 2000; U.S. Serial No. 09/688,946, filed October 16, 2000; and U.S. Serial No. 09/688,947, filed October 16, 2000.

**CLAIM REJECTIONS UNDER 35 U.S.C. § 102**

Claims 1 and 2 are rejected under 35 U.S.C. § 102(b) as anticipated by Hasan. Applicants respectfully disagree.

Hasan's structure is tetramethylindotricarbocyanine conjugated to two monoclonal antibodies ("This report documents the conjugation of chromophore-substituted polyglutamic acid with two Mabs, ..." (page 108, second column)).

Applicants' structure has four bioactive molecules. Applicants respectfully assert that Hasan's compound thus does not anticipate applicants' invention and request that the rejection be withdrawn.

**CLAIM REJECTIONS UNDER 35 U.S.C. § 103**

Claims 1, 2, 8, 9, 15-17, 20, and 21 are rejected under 35 U.S.C. § 103(a) as obvious over Hasan. Applicants respectfully disagree.

It is the Examiner's position that, although Hasan fails to disclose administering TCC to a subject wherein  $R^{10}$  and  $R^{11}$  - $C_2$ - $C_{10}$  alkyl, Hasan discloses that the "detailed characterization of the conjugate may result in preparation of more effective conjugates and that their lab is studying *In vivo* applications of the conjugate. In addition, a skilled practitioner in the art would recognize that a homologous series is a family of chemically related compounds that vary from member to member by a  $CH_2$  group with their characteristics being principally the same.

Applicants respectfully assert that claims to chemical structures cannot be rejected as obvious based only upon structural similarity; this vitiates the requirement that the subject matter of the invention must be viewed as a whole. In re Wagner, 152 U.S.P.Q. 552 (CCPA 1967). There is no teaching, suggestion, or motivation in Hasan to vary  $R^{10}$  and  $R^{11}$  by the addition of one or more  $-CH_2$  groups. Furthermore, Hasan's disclosure is directed to only the TCC attached to polyglutamic acid and two monoclonal antibodies, such as anti-Leu-1 and anti bovine serum albumin and their possible *in vivo* applicability of conjugates of this type. There is no other suggestion or motivation for the *in vivo* use of applicants' invention which has four bioactive molecules. Thus, applicants respectfully request that the objection be withdrawn.

#### **WITHDRAWN CLAIMS**

Applicants have amended claims 1, 2, 8 and 9 to recite elected Group I. Applicants respectfully request that claims 3-7 and 10-14 be considered because they depend from the amended claims which recite the elected invention.

**CLAIM OBJECTIONS**

Claims 18, 19, and 22 are objected to. In addition to the foregoing reasons, applicants have amended independent claim 8 to recite applicants' elected group and believe claim 8 is allowable. Applicants respectfully request that the objections to claims 18, 19, and 22, which are dependent upon claim 8, be withdrawn.

**CONCLUSION**

For the foregoing reasons, applicants submit that the claims are patentable, and an early Notice of Allowance is respectfully requested. Applicants know of no fee due with this submission. However, if any fees are necessary, the Commissioner may consider this to be a request for such and charge any necessary fees to Deposit Account No. 23-3000.

The Examiner is invited to contact applicants' undersigned representative with any questions.

Respectfully submitted,

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Page 15 of 15